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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,042	04/13/2001	Masanori Matsuura	OAC-011	5952

959 7590 07/30/2003

LAHIVE & COCKFIELD  
28 STATE STREET  
BOSTON, MA 02109

EXAMINER

MCLEAN MAYO, KIMBERLY N

ART UNIT	PAPER NUMBER
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2187

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

9

## Office Action Summary

Application No.

09/835,042

Applicant(s)

MATSUURA ET AL.

Examiner

Kimberly N. McLean-Mayo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 21 May 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. The enclosed detailed action is in response to the Amendment submitted on May 21, 2003.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al. (USPN: 6,341,239) in view of Earnshaw et al. (PGPUB: US 2003/0012212).

Regarding claims, 1-3, 5, 7-9, 11, 13-15, 19-20, 22 and 27-29, Hayashi discloses a rewriting device (Figure 1, Reference 14) for rewriting data stored in a non-volatile memory (Figure 1, Reference 20) of a vehicle controller (Figure 1, Reference 2), wherein the rewriting device is capable of communicating with the vehicle controller (C 3, L 43-46; C 4, L 33-44). However, Hayashi does not disclose the rewriting device configured to determine that communication between the rewriting device and the vehicle controller is offline when no response is received from the vehicle controller within a first determination time; wherein when a deleting/writing operation of data is being performed, the rewriting device is configured to prohibit the determination of offline until a second determination time elapses, the second determination time being greater than the first determination time, wherein if no response is received from the vehicle controller within the second determination time, which is the time necessary to delete

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data stored in the memory/write data in the memory, it is determined that communication is offline. Earnshaw teaches the concept of determining that communication between two devices (transmitter/receiver) is offline (Page 3, Section [0029, lines 10-20]; Section [0030, lines 1-13] - a condition which is preventing the receiver from responding/communicating) when no response is received from the receiver device within a first predetermined time period (ACK timer 20; Page 3, Section [0029, lines 10-20]; Section [0030, lines 1-13]); an wherein when an operation is being performed the transmitter is configured to prohibit determining that the receiver device is offline (Page 3, Section [0030, entire], Section [0031, lines 1-9] - the transmitter is prohibited in determining or identifying that the receiver device is offline by retransmitting the request and waiting a second time period) until a second determination time elapses (Panic timer, Page 3, Section [0030, entire], Section [0031, lines 1-9] ), the second determination time being greater than the first determination time (Page 3, Section [0029, lines 11-20], Section [0030, lines 13-19] - the Panic timer is greater than the ACK timer; ACK timer expires or has a duration of  $A+D - T(1)$ ; Panic timer has a duration of  $A+D-T(2)$ ; wherein  $T(2)$  is less than  $T(1)$ ), wherein if no response is received from the receiver within the second determination time, which is the time necessary to perform an operation, it is determined that communication is offline [communication is not taking place] (Page 3, Section [0031, lines 7-9]). This feature taught by Earnshaw provides an efficient and reliable means of communicating between two devices by ensuring that the devices receive the information in which it is designed to receive and by identifying when the devices have not received the information in which it is to receive. Hayashi discloses communicating between two devices; however, Hayashi does not provide any means for ensuring efficient and reliable data communication. Hence, it would have been obvious to

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one of ordinary skill in the art to use Earnshaw's teachings in the system taught by Hayashi for the desirable purpose of efficiency and reliability.

Regarding claims 4, 10, 16-17, 21 and 23-26, the system taught by Hayashi and Earnshaw discloses acquiring an operation time prior to an operation and to set the second determination time to the operation time (Earnshaw – Page 3, Section [0030], lines 14-23, the operation time is acquired from  $A+D-T(2)$ ); wherein when the operation is being performed, the determination of offline is prohibited until the second determination time that is set according to the operation time elapses (Earnshaw - Page 3, Section [0030, entire], Section [0031, lines 1-9] - the transmitter is prohibited in determining or identifying that the receiver device is offline by retransmitting the request and waiting a second time period).

Regarding claims 6, 12, and 18, the system taught Hayashi and Earnshaw discloses an operation time is calculated based on an estimate of how long it should take the device to perform the desired operation (Earnshaw – Page 3, Section [0030, lines 14-19) and thus if the operation is a memory operation it is evident that the estimated time required to perform the operation would consider the size of the data and the specification of the memory.

#### ***Response to Arguments***

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

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***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

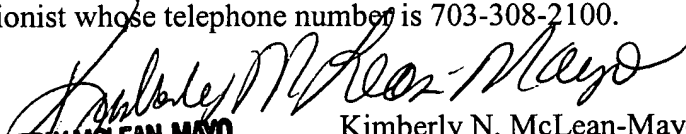
Luzzi – USPN: 6321,263 – determining device is offline/busy.

Clausing – USPN: 4,091,448 - determining device is offline/busy.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly N. McLean-Mayo whose telephone number is 703-308-9592. The examiner can normally be reached on M-F (9:00 - 6:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks can be reached on 703-308-1756. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7329 for regular communications and 703-746-7240 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2100.

  
**KIMBERLY MCLEAN-MAYO**  
**PRIMARY EXAMINER**  
Kimberly N. McLean-Mayo  
Examiner  
Art Unit 2187

KNM

July 28, 2003